detail, yet having in view the author's object to supply only a book of ready reference for the practising lawyer, and to give to the student a broad general knowledge of the field of Federal procedure, it will be conceded that more could not be expected in a work of this compass. To either of the above,—lawyers or law-students who are interested in Federal procedure,—the work is likely to prove an invaluable manual. *F. H. S.*

---

## NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

ALBANY LAW JOURNAL.—February.

*Regulation of Corporations by Federal Law.* Robert L. Cutting. Any original contribution to the discussion of this subject is of value at this time when opinions are not yet crystallized, but are ready for the forming. Mr. Cutting points out the very great harm of over-capitalization, argues that this is the real evil which arises from the formation of those aggregations we call trusts, and advocates the regulation of the capitalization of all corporate bodies by the central government under the power given by the inter-state commerce clause. He does not deny that that clause must be liberally construed in order to do this, but we are given to understand that the clause has already been so widely interpreted that "it may well be questioned whether, with its power over commerce and the mails, the Federal government is not in every sense a national government, and the United States a nation, rather than a mere federation of sovereign states." If this latter question has to be decided before the remedy advocated by Mr. Cutting is put into operation, we cannot be very hopeful of its immediate adoption. Meanwhile the idea deserves attention, with the other panaceas advocated.

---

COLUMBIA LAW REVIEW.—February.

*Chief-Justice Marshall on Federal Regulation of Inter-state Commerce.* E. Parmalee Prentice. An interesting examination into conditions at the time the country was trying to develop its immature systems of inter-state communication, and into the early grants for the privilege of transportation, leads us to an examination of the case of *Gibbons* v. *Ogden* and the scope of its decision, which, it is contended, related solely to transportation by water, "and amounted to a regulation of the coasting trade, a subject which had wholly been confided to Congress." The gradual extension of the doctrine enunciated in this case until it had broadened into the present rule, which Mr. Prentice calls "Webster's, not Marshall's, rule for the construction of Federal commercial powers," is traced, the decision in *Cooley* v. *The Port Wardens* being held a departure from the intention of the Constitution," and also "a departure from legal principles." As usual, "the influence of the Civil War . . . in expanding the Federal jurisdiction" is commented upon, and the dangers of the present situation are signified by the quotation of the sentiment of Randolph, "Sir, there is no end to the purposes that may be effected under such constructions of power." And a second quotation from Jackson, "In proportion as the general government encroaches upon the rights of

the states, in the same proportion does it impair its own power and detract from its ability to fulfil the purposes of its creation."

*Should the Motive of the Defendant Affect the Question of His Liability?—The Answer of One Class of Trade and Labor Cases.* William Draper Lewis. The object of this paper, as stated by the author, is "Not to discuss the question whether the motive should be considered as affecting liability, or whether, considering the law of torts as a whole, it is so considered, but to examine how far modern judges, dealing with new questions of alleged tort, have taken into consideration the motive of the defendant." The question is thus made concrete and definite. We have merely to examine the cases, both English and American, and find the result. As a matter of fact, we are not quite so closely limited, and the paper is of much more interest and importance than it could be if it were a mere summing up of the decisions of the judges. We have a careful definition of the word motive, as used in the article, and a discussion of the word malice, which shows us that in these decisions the word has not always meant the same thing, and has rarely meant the thing the public means when it speaks of a malicious act.

The examination into cases begins with the English cases, and here we find differences of treatment so great that we are told that "In view of this confusion of opinion on such a fundamental question in the law, it is impossible to foretell how the highest court in England will decide the next novel case of alleged tort which may arise." The American cases do not yield a much more satisfactory answer, although we find that "The conclusion then from an examination of the trade and labor cases in this country is, that though there are cases to the contrary, the rule is to consider the motive of the defendant as a factor in determining the question of his liability for the harm which his act has caused the plaintiff."

It may be suggested that the confusion existing in the world of labor is the cause of, and is reflected by, the confusion in the arguments of the judges. The unsettled state of the law on this subject is, as usual, but the reflection of the unsettled state of public opinion. The law will probably not settle the public mind, but the public mind when settled will react on the law.

*The Legal Nature of International Law.* James B. Scott. The paper is very largely devoted to a discussion of the well-known Austinian contention that international law is not law properly so called. It seems almost a pity that it is still necessary to devote so much time to refuting Mr. Austin, but it is impossible to measure the influence his often refuted theories still have over the science he did so much to narrow and confine. The slavery of the minds of the last century to the compelling mind of Austin is exemplified by the fact that in 1686 Sir Robert Wiseman (who is quoted by Mr. Scott) was able to think untrammelled by Austinian shackles, and could, therefore, make a clear, concise, and simple definition of the law of nations. The quotation as given by Mr. Scott, through the medium of Wildman's "Law of Nations," does not do full justice to Sir Robert Wiseman, as will be seen by a reference to the little book called the "Law of Laws" from which Mr. Wildman took his quotation, followed by Mr. Scott. If there are any who still sustain the position taken by Mr. Austin, it is to be hoped that they will not neglect to profit by this article.